

EX PARTE OR LATE FILED

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REDACTED – FOR PUBLIC INSPECTION

June 4, 2012

FILED/ACCEPTED

ORIGINAL

VIA COURIER

JUN - 4 2012

EX PARTE

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Federal Communications Commission  
Office of the Secretary

**Re: *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers;  
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent  
Local Exchange Carrier Rates for Interstate Special Access Services, WC  
Docket No. 05-25, RM-10593***

Dear Ms. Dortch:

On behalf of tw telecom inc. ("tw telecom"), please find enclosed two copies of the redacted version of a notice of *ex parte* meeting. The notice contains information that the Wireline Bureau has deemed highly confidential under the *Second Protective Order*<sup>1</sup> in this proceeding. Specifically, the notice contains highly detailed information regarding the discount plans under which tw telecom purchases special access services.<sup>2</sup>

tw telecom keeps the information for which it seeks highly confidential treatment in the

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<sup>1</sup> *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd. 17725 (2010) ("*Second Protective Order*"); see also *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd. 6571 (2011) ("*Letter to Paul Margie*") (supplementing the *Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, 27 FCC Rcd. 1545 (2012) ("*Letter to Donna Epps*") (further supplementing the *Second Protective Order*).

<sup>2</sup> See *Letter to Donna Epps* at 5, category M (deeming information that, alone or in combination with other information, "would reveal the identity of a customer" that purchases service under a particular tariff to be eligible for highly confidential treatment); see also *id.* at 4, category G (deeming information regarding "the discount plans under which [a customer's] circuits were purchased" to be eligible for highly confidential treatment).

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strictest confidence, and it is not available from public sources. Any of this information, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. For example, competitors would be able to determine tw telecom's costs, both in the aggregate and on a circuit-by-circuit basis, of obtaining wholesale inputs. Competitors would also be able to determine the terms and conditions, as defined by specific discount plans, to which tw telecom is subject when seeking to serve customers via incumbent LEC facilities. Competitors would be able to exploit access to this information to design competitive strategies that unfairly disadvantage tw telecom. Accordingly, the maximum level of protection afforded highly confidential information under the *Second Protective Order* should apply to the information described herein.

One machine-readable copy of the redacted version of the notice of *ex parte* meeting will be filed electronically via ECFS. Additionally, pursuant to the *Modified Protective Order*<sup>3</sup> and *Second Protective Order*, one original of the highly confidential version of the notice is being filed with the Secretary's Office under separate cover, and two copies of the highly confidential version of the notice will be delivered to Marvin Sacks of the Pricing Policy Division of the Wireline Competition Bureau.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

*Counsel for tw telecom inc.*

cc: Deena Shetler  
Eric Ralph  
Travis Litman  
Nicholas Alexander  
Elizabeth McIntyre  
Jamie Susskind  
Andrew Mulitz  
Daniel Shiman  
Ben Childers  
Jack Erb  
Kenneth Lynch  
Joseph Lilly  
Maxwell Slackman

Enclosure

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<sup>3</sup> *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd. 15168 (2010).

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June 4, 2012

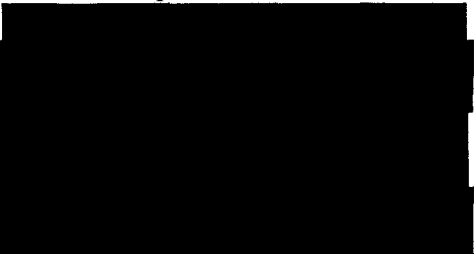
**VIA COURIER**

***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re: *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593***

On May 31, 2012, Rochelle Jones, Kristie Ince and Don Shephard of tw telecom inc. (“tw telecom”) and the undersigned met with Deena Shetler, Eric Ralph, Travis Litman, Nicholas Alexander, Elizabeth McIntyre, Jamie Susskind, Andrew Mulitz, Daniel Shiman, Ben Childers, Jack Erb, Kenneth Lynch, Joseph Lilly, and Maxwell Slackman of the Wireline Competition Bureau. During the meeting, the tw telecom representatives made the points summarized in the attached document.

In addition, in response to questions from the Wireline Bureau staff, the tw telecom representatives explained that, as described in tw telecom’s April 11, 2012 *ex parte* letter in the above-referenced proceeding,<sup>1</sup> **[HIGHLY CONFIDENTIAL BEGIN]** 

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<sup>1</sup> See Letter from Thomas Jones and Matthew Jones, Attorneys for tw telecom, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25; RM 10593 at 13-14 (filed April 11, 2012) (“tw telecom April 11, 2012 Response to Second Data Request”).

<sup>2</sup> See *id.* at 4-20.

<sup>3</sup> See *id.* at 13-14.

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[REDACTED]  
[HIGHLY CONFIDENTIAL END] In addition, tw telecom explained that, while it would like to purchase Ethernet special access circuits from ILECs wherever possible, [HIGHLY CONFIDENTIAL BEGIN] [REDACTED]  
[REDACTED]

[HIGHLY CONFIDENTIAL END]

The tw telecom representatives further explained that the company generally decides to build new facilities to a building only if tw telecom is able to win one or more sufficiently profitable contracts to serve customers in the building. Even where tw telecom identifies one or more suitable customers for these purposes, tw telecom is sometimes unable to build facilities to the customers because of onerous conditions for building access established by building owners. Finally, the tw telecom representatives explained that, where tw telecom serves a customer via an incumbent LEC special access circuit, tw telecom faces significant obstacles to switching the customer to tw telecom's own facilities, even if such an option were economically feasible. Most importantly, in order to make such a switch, tw telecom must perform a "hot cut" from the incumbent LEC last mile facility to the tw telecom last mile facility. This process is often not efficient, and it causes a service interruption for the customer, something business customers' generally will not tolerate. Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

*Counsel for tw telecom inc.*

cc: Deena Shetler  
Eric Ralph  
Travis Litman  
Nicholas Alexander  
Elizabeth McIntyre  
Jamie Susskind  
Andrew Mulitz  
Daniel Shiman  
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Maxwell Slackman

Enclosure

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# Interim Special Access Remedy Plan DS1 & DS3

tw telecom

May 31, 2012

# Pricing

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- Cap rates in areas with Phase II pricing flexibility at a level no higher than rates under price caps.
  - Allow an opportunity to keep Phase II prices, but place burden of proof on ILECs to show that prices are just and reasonable.
- Require a one-time reduction in price cap rates through an adjustment to the Price Cap formula and/or change the price cap formula prospectively.
  - Initial reductions should be targeted to mileage rates.

# Tariff Discount Plans

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- Require each ILEC to offer all of their plans across their entire footprint and across all products (DS1/DS3) to create nationwide discount plans that simplify special access purchases. Managing multiple plans drives excess cost to the business.
  - Allow opportunity to show mandatory extension of existing offerings is unreasonable.
  - Prohibit Commercial “tie-in” arrangements with non-special access services.
- Making Tariff Discount Plans available solves some of the most costly problems with Terms and Conditions:
  - Non-Recurring Charge waivers
  - Circuit Portability
  - Early Termination Charge waivers
- Eliminate or modify other Unreasonable Terms and Conditions:
  - Limit the amount of any volume commitment to 50%.
  - Prohibit capturing growth into the plan.
  - Eliminate penalties and other impediments associated with moving to a new technology.
  - Prohibit Rate increases during contract period.